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BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Matter of)
)
Limitations on Commercial Time) DOCKET NO. 93-254
on Television Broadcast Stations)

To: The Commission

COMMENTS OF MIRACLE ROCK CHURCH

Miracle Rock Church, by its attorneys, hereby submits the following comments in response to the Notice of Inquiry, 8 FCC Rcd. 7277, released October 7, 1993, in the above-captioned proceeding. Miracle Rock Church, a not-for-profit Utah corporation, has been approved as the assignee of television station KOOG-TV, Channel 30, Ogden, Utah.[1]

Miracle Rock Church filed comments in Docket 93-8 which bear on the issues raised in the Notice of Inquiry. For that reason, Miracle Rock Church is incorporating those comments herein by this reference, and is attaching a copy of those comments hereto.

The limits which the FCC formerly imposed on commercial matter were grounded in the perception that viewers had no choice but to watch the programming broadcast by their local television operators. Whether that view of the world was justified then, it

1 Because of problems the parties have encountered with respect to the equipment of the station, the sale has not yet closed.

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is not justifiable now. In the Ogden-Salt Lake City market, for example, viewers have the option of watching any one of four network-affiliated stations and two independent television stations. Viewers who prefer commercial-free programming have the option of tuning into any one of three noncommercial educational television stations. In addition, cable television provides a multitude of viewing options. Most area cable systems have at least thirty-six channels, providing a panoply of choices for cable subscribers. Clearly, in 1993 no one in America is being forced to watch an infomercial, or to view more minutes of commercial matter per hour than he or she can tolerate.

The abundance of cable channels also demonstrates the futility of any effort to ban infomercials from the broadcast screen. If broadcast stations like KOOG-TV are no longer permitted to air infomercials, that program form will simply escape to cable, with its abundance of channels. Such a result would not serve the public interest, for while it would provide perhaps a marginal increase in the amount of noncommercial minutes of entertainment programming available to over-air viewers, it would deprive those who do not subscribe to cable of the viewing choice that infomercials provide.

No particular sanctity should attach to the short form spot announcements that presently dominate the commercial broadcast landscape. Viewers will not make better purchasing decisions based on a thirty-second commercial as opposed to a thirty-minute presentation that examines the merits of a product or service indepth. In a country such as ours where freedom of expression is prized, there should be no fine in allowing an advertiser the freedom to maximize the amount of information about his or her product or service through the broadcast medium.

Just as the Commission has, in recent years, relaxed its strictures on the broadcast of commercial matter, so have the courts recognized that commercial speech, like any other form of discourse, is protected under the First Amendment to the United States Constitution. Indeed, it would be unconstitutional for the Commission to deprive commercial speakers of access to broadcast stations for more than a few minutes at a time. Considering that the Commission has encouraged the broadcast of long-formed political programs, there is no reason that those who seek to convince the public of the merits of a new product should be deprived of the same opportunities for free speech as the purveyor of a new political program.

Although a television station serves the public interest by providing a vehicle for commercial speakers to reach the public, and for the public to become better informed about various products and services, it is not the intention of Miracle Rock Church to broadcast commercial matter 168 hours a week on KOOG-TV to the exclusion of all other programming. Rather, the Church plans to retain a home shopping segment on KOOG-TV principally to provide a means of financial support for the public service programs it presents over KOOG-TV. (Miracle Rock Church has long presented programs on KOOG-TV which address community problems such as drug and alcohol abuse, and the desire to preserve those programs was what prompted the Church's efforts to acquire the assets of KOOG-TV when it passed into foreclosure and receivership.)

In sum, there is no need for a new regulation imposing commercial limits on broadcasters, or even an "informal" processing guideline that would impose further delays on an application processing system that is already suffering from severe backlogs.[2]

Accordingly, the Commission should terminate this proceeding without adopting any additional regulations.

Respectfully submitted,

MIRACLE ROCK CHURCH

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2 For example, counsel for Miracle Rock Church has been advised that it currently takes more than two years for the FCC to resolve an objection to a license renewal application that is based on EEO grounds.

DUPLICATE

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of	)	
	)	
Implementation of § 4(g) of the Cable Television Consumer Protection Act of 1992	)	MM Docket No. 93-8
	)	
Home Shopping Station Issues	)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TO: The Commission

C O M M E N T S

Miracle Rock Church ("Miracle Rock"), by counsel, hereby offers the following comments in response to the Notice of Proposed Rulemaking released January 28, 1993, in the above-captioned proceeding. The Notice seeks information on which to base the adoption of regulations relating to stations that are predominantly utilized for the transmission of sales presentations ("home shopping stations"), including issues regarding the carriage of such stations on cable systems. In the Cable Television Consumer Protection and Competition Act of 1992, Congress directed the FCC to undertake this rulemaking proceeding.

Miracle Rock is a not-for-profit Utah corporation. It is also the proposed assignee of station KOOG-TV ("the Station"), Channel 30, Ogden, Utah. See (File No. BPCT-930315KE). The Station was formerly licensed to Ogden Television, Inc. Recently, pursuant to prior FCC approval, the license was assigned to a

Receiver, Scott Stuart, from whom Miracle Rock proposes to purchase the station license.

Station KOOG-TV is affiliated with Home Shopping Network ("HSN"). The Station carries HSN programming for eight hours per day, from 8:00 a.m. to 4:00 p.m. During the Station's remaining nine hours of operation per day, it provides programming of interest to Utah residents, including some locally originated programming and a children's program.[1]

Station KOOG-TV is the only operating commercial television station licensed to Ogden. It is therefore the only local television voice in Utah's second largest city, except for an educational station.

Station KOOG-TV provides an important public service in the community. As the only local commercial television voice, it is the only station in Ogden obligated to address the problems, needs and interests of Ogden. For example, KOOG-TV airs a program each week for half an hour in which an Ogden attorney provides information on legal requirements and developments. In addition, periodically the local County Assessor, David Haun, appears on KOOG-TV and advises local residents on the Greenbelt Act and other issues affecting the community.

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1 The station broadcasts in excess of 200 public service announcements per week. The financial straits that forced KOOG-TV into receivership reduced the level of local origination. However, the proposed assignee plans to restore the Station's production crew so that the Station can resume airing, among other things, a community calendar listing local events of local interest free of charge.

As the new licensee, Miracle Rock intends to retain all of the existing programming responsive to the needs of the Ogden area. In addition, Miracle Rock plans to broadcast religious and public affairs of particular interest to the community. Specifically, Miracle Rock's programs will address people's needs relating to marriage problems, drugs, alcohol, housing, food and clothing needs, and support groups (for former addicts); in short, problems that people have.

In addition, Miracle Rock intends to address the needs of Utah's Hispanic community, which is centered in Ogden and Salt Lake City. Miracle Rock's President and General Manager is Isaac Max Jaramillo, a Hispanic; its board of directors is entirely composed of women and Hispanic members. A substantial proportion of the total membership of the organization is Hispanic. There is presently no significant television voice for these individuals within Channel 30's service contour.

Cable carriage is critical to the viability of Channel 30. Without it, the Station cannot survive. As mentioned above, the Station is currently in receivership because the former owner was unable to make the Station financially viable. Affiliation with HSN provides a major share of the revenues of KOOG-TV. In a market dominated by the Salt Lake City stations (which include a VHF independent and a strong UHF independent), the HSN affiliation payments represent the only way to keep the Station on the air. Absent the affiliation with HSN, Miracle Rock could not contemplate expansion of the local programming offered by KOOG-TV, or even sustain the existing levels.

Miracle Rock submits that a licensee's broadcast of home shopping programming in lieu of other commercial entertainment programming is irrelevant to the issue of whether a station is operating in the public interest. Certainly, few reasonable viewers would argue that most commercial entertainment programming provides any greater intrinsic value to the community than the programming of HSN. However entertaining music videos may be, for example, they do not exactly resolve the needs and problems of the community, except perhaps for the need to escape one's problems. Accordingly, there is no basis for differentiating between the two types of programs in determining cable carriage issues.

Stations which carry home shopping programming should not be distinguished from those carrying any other type of entertainment programming for the purposes of mandatory cable carriage. If there is any distinction, it should be noted that home shopping programming at least provides a service for people who may be confined to their homes or are otherwise unable to shop. Nevertheless, both stations carrying home shopping programming and those carrying entertainment programming should be entitled to cable carriage on an equal basis. It is not the commercial programming of a station which determines its value to the community. It is the station's awareness of the needs of the community and its responsiveness to those needs that is paramount.

Channel 30, under the control of Miracle Rock, will be responsive to the community's needs and provide a service to the local community. Its continued viability is clearly in the best interests of Ogden and of the Utah television market as a whole. That viability depends entirely on cable carriage. Even in a market like Utah with relatively low cable penetration, a station like KOOG-TV simply cannot afford to be cut off from the large proportion of its potential audience which subscribes to cable. The Station should not be penalized for choosing home shopping programming, which is valuable to many individuals, over other types of commercial programming with little or no intrinsic value.

Among the biggest handicaps KOOG-TV has faced in the past is its lack of cable carriage in many significant communities in the ADI, including Logan (the home of Utah State University) and Provo. In other cities, KOOG-TV was, until recently, hindered by poor channel positioning.

In this regard, the pro-competitive purposes of the Cable Act should be remembered. Cable television systems hold virtual monopolies in their respective franchise areas, and (absent mandatory carriage) control access by broadcast stations to the households that subscribe to cable. In most markets, that set of households comprises the majority of upscale homes, and is an essential part of the audience for an over-the-air broadcaster to reach. Yet as keepers of the gate, cable operators have an incentive to keep traffic out of the home which interferes with the private interests of the cable system owner.

As more and more cable television systems have sought, and found, substantial sources of revenue in the form of local advertising sales, it becomes more and more in the interest of the cable operator to limit access to the cable system and to exclude stations which compete for audience and revenues with the cable system's local advertising sales operation. As a matter of antitrust policy, it becomes more and more important that the Federal Government prevent the cable operator from abusing his monopoly power in that fashion so as to limit competition.

That is particularly true in the area of home shopping. Many of the major cable system owners also own interests in home shopping programs, principally including the QVC channel. Cable operators who claim the right to keep HSN affiliates off their systems are not doing so out of pure motives grounded in First Amendment concerns about the propriety of such speech; they themselves run similar programs.

To the extent modern cable systems wish to engage in such speech, neither Miracle Rock nor the Cable Act is saying that they cannot do so with the remainder of their (generally very ample) channel capacity. All KOOG-TV and other HSN affiliates need is the opportunity to appeal to viewers on an equal footing with the cable system's own shopping channels, and to have access to the viewers the broadcaster is licensed to serve.

Carriage for HSN-affiliated stations is also important from the FCC's own policy perspective. The broadcaster has a mandate from the FCC to serve the public interest, yet is foreclosed from achieving that goal (in the absence of carriage) as to cable households. The case for carriage is especially obvious for stations such as KOOG-TV which broadcast a substantial amount (nine hours per day) of non-HSN programming. Yet even if KOOG-TV carried much more HSN programming, and only a few hours a week of non-HSN programming, the logical analysis of the bases for carriage would not be substantially different.

No commercial television station in the country can afford to broadcast nothing but news, public service announcements and public affairs programming. In order to sustain those kinds of programming, stations need the financial support provided by entertainment programming, whether that programming is syndicated or fed through one of the four major networks, and whether the revenues come to the station through spot advertising sales, half hour sales, or network compensation payments. If Miracle Rock were to expand the number of hours in which KOOG-TV carries HSN programming, it would not reduce the proportion of the station's schedule devoted to community service programming. On the contrary, if greater resources were provided by HSN, Miracle Rock would be delighted to double or triple the amount of public interest programming on KOOG-TV in the remaining hours.

The Commission has requested comments as to the proportion of home shopping programming which should be deemed to trigger a discriminatory treatment of HSN affiliates for carriage purposes, if the Commission decides to adopt a different standard for stations broadcasting substantial amounts of such programs.

Miracle Rock submits that any such distinction would tread too heavily on the licensee's discretion in selecting programs. Government operates best when it leaves such decisions to broadcasters, requiring them only to show that, in some of their broadcast week (with no inflexible minimum hours), they have aired programs that serve the public interest. Even a station that devotes 80% of its weekly schedule to home shopping programs is not by definition ignoring the public interest any more than a station 80% of whose schedule consists of other entertainment programming.

At present, KOOG-TV cannot afford to operate from midnight until 7:00 a.m. Surely a silent station is of no greater value to the public than a station broadcasting home shopping programs. Yet if KOOG-TV were to expand its HSN time into the overnight hours, a majority of its broadcast day would consist of HSN programming.

For the foregoing reasons, Miracle Rock Church urges the Commission to grant to television stations which carry home shopping programming for a substantial part of their broadcast day the same mandatory cable carriage rules as other commercial television stations.

Respectfully submitted,

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